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ORIGINAL

EX PARTE OR LATE FILED

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

October 1, 2002

Ms. Marlene Dortch, Secretary
Federal Communications Commission
450 12th Street S.W.
Washington, D.C. 20554

NOTICE OF EX PARTE PRESENTATION
Triennial Review, CC Docket Nos. 01-338, 96-98, 98-147

Dear Ms. Dortch:

On September 30, 2002, Kevin Joseph, Larry Strickling, Mary Albert and Thomas Jones met with Michelle Carey, Tom Navin, Claudia Pabo, Shanti Gupta, Ian Dillner, Mike Engel, Daniel Shiman, Ben Childers and Elizabeth Yockus to discuss Verizon's obligation to provide unbundled access to DS1 loops. The issues covered are set forth in the attached document.

Respectfully submitted,

Mary C. Albert

Mary C. Albert
Vice President Regulatory and Interconnection

Encl.

cc: Michelle Carey
Thomas Navin
Ben Childers
Claudia Pabo
Shanti Gupta
Ian Dillner
Mike Engel
Daniel Shiman
Elizabeth Yockus

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September 30, 2002

Ms. Marlene Dortch, Secretary
Federal Communications Commission
450 12th Street S.W.
Washington, D.C. 20554

NOTICE OF EX PARTE PRESENTATION
Triennial Review, CC Docket Nos. 01-338, 96-98, 98-147

Dear Ms. Dortch:

We are writing to respond to Verizon's September 19, 2002 Ex Parte submission in the above-captioned proceedings on its "Facility Build" policy and to supplement the record with respect to the need for the Commission to clarify the circumstances under which an incumbent local exchange carrier ("ILEC") may refuse to provision a competitive local exchange carrier's ("CLEC") UNE order due to no facilities being available. Over the past year, Verizon has been rejecting a disproportionate number of Allegiance orders for UNE DS1s claiming that it has no facilities available to fill the order. Allegiance submits that in rejecting the vast majority of these orders, Verizon is interpreting its legal obligations far too narrowly and is violating Section 251(c)(3) of the Communications Act and the Commission's rules.

Allegiance's operating subsidiaries are facilities-based local exchange carriers providing service in Verizon's territories in Massachusetts, New York, New Jersey, Pennsylvania, Maryland, Virginia and the District of Columbia. Allegiance delivers service to its customers using a combination of its own switching facilities and unbundled loops purchased from Verizon. Allegiance, like many other CLECs, is dependent upon Verizon to provide the "last mile" loop facilities it needs to reach its end users. One of Allegiance's most popular products is an integrated voice/high speed data service provided over a DS1 circuit. To offer this service, Allegiance leases DS1s from Verizon as unbundled network elements and then adds its own electronics. In at least one market, Verizon has rejected up to 60% of Allegiance's orders for UNE DS1s, claiming that it has no facilities available to fill the orders. Regionwide, Allegiance has experienced rejection rates over 20%.

Verizon's No Facilities Policy Is An Attempt To Avoid Performing Routine Modifications To Its Facilities

Section 251(c)(3) of the Communications Act imposes on Verizon the duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis on rates, terms and conditions that are just, reasonable and nondiscriminatory. Verizon is not complying with this obligation.

Using terms of "no facilities" and "new construction," Verizon attempts to paint the picture that it is being asked to dig trenches, to lay new copper or fiber or otherwise undertake significant additions to its facilities. The facts demonstrate differently. In fact, Verizon will reject an order due to no facilities when only routine modifications would need to be made to provision the element.

In July 2001, Verizon sent a letter to all of its CLEC customers regarding its "policies and practices with respect to the provisioning of unbundled DS1 and DS3 network elements." See Attachment 1 hereto. Verizon will reject a UNE DS1 or DS3 order due to no facilities for any one of six reasons: (1) there is no repeater shelf in the Central Office or customer location or remote terminal; (2) there is no apparatus or doubler case; (3) there is a need to place fiber and/or a multiplexer to fill the order; (4) there is a need to turn up a shelf or multiplexer; (5) there is no riser cable or buried drop wire if a trench or conduit is not provided; and (6) the copper cable is defective, and there are no spares available; Verizon would need to place cable (fiber or copper) for spares. See Attachment 2, hereto. Since this policy was implemented, Allegiance and other CLECs have seen a tremendous increase in the number of their UNE DS1 orders rejected by Verizon due to no facilities. For the most part, the rejections are not due to lack of copper or fiber, but to the lack of a repeater shelf, apparatus and/or doubler case, or multiplexing capacity, conditions that can be easily remedied.

In its decision in the Virginia Arbitration proceeding, the Commission recently reiterated that Verizon's 251(c)(3) obligations encompass providing the multiplexing function on unbundled loops, stating that "Verizon cannot refuse to provision a particular loop by claiming that multiplexing equipment is absent from the facility. In that case, Verizon must provide the multiplexing equipment, because the requesting carrier is entitled to a fully functioning loop." *In the Matter of the Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection*

Disputes With Verizon Virginia, Inc. and For Expedited Arbitration, CC Docket No. 00-218, at fn. 1658 (released July 17, 2002). This decision quite clearly instructs that at least two of the reasons Verizon consistently offers to avoid provisioning UNE DS1s – the need to place a multiplexer or adjust a multiplexer to increase capacity – are not legitimate reasons for refusing to provision a loop. Nonetheless, Verizon has indicated its intention to continue rejecting UNE loop orders due to no facilities where there is a need to place a multiplexer or to turn up a shelf or multiplexer to fill the order. See Attachment 3 hereto. In its September 19, 2002 Ex Parte, Verizon again confirmed that it will not turn up, or reconfigure a shelf on an existing multiplexer or place a new multiplexer to provision UNE orders. *Id.* at 11-12.

At least three of the other "no facilities" circumstances that Verizon cites to reject UNE DS1 orders – no repeater shelf, need to turn up a shelf and no apparatus/doubler case – involve relatively minor adjustments that can be remedied without construction and for a modest amount of money. Verizon routinely makes such adjustments to provision working DS1s for its retail customers and it should be required to do the same to fill UNE DS1 orders from its CLEC customers.

<u>Verizon's Policy Has Greatly Hampered Allegiance's Ability To Offer Integrated Services</u>

Verizon's rejection of UNE DS1 orders due to no facilities creates numerous problems for CLECs, not the least of which is provisioning delays. When Verizon rejects a UNE order due to "no facilities," it gives CLECs two options: (1) either cancel the order and resubmit it at a later unspecified date when facilities may (or may not) be available or (2) cancel the order and resubmit it as an order for special access facilities. Neither of these options is acceptable. Under the first option, the CLEC is put in the position of having to inform its customer that it has no idea when or if it can deliver the service the customer ordered, because it cannot get a commitment date from Verizon as to when or if a UNE DS1 will be available. A customer ordering a DS1 directly from Verizon would not experience a "no facilities" rejection because, as noted above, Verizon "will build for" its retail customers.

Under the second option, while Allegiance may be able to obtain a special access circuit that it can use to deliver its integrated voice/high speed data product to its customer in a more timely fashion, it is forced to pay Verizon significantly higher recurring and nonrecurring rates for the special access circuit than it would pay for a UNE DS1. This seriously hampers Allegiance's ability to offer its customers a competitively priced high capacity broadband service. In addition, the process of having to cancel the UNE order and resubmit it as a special access order significantly prolong the provisioning intervals. In the District of Columbia, the average provisioning interval that Allegiance has experienced on UNE DS1 orders rejected due to no facilities and resubmitted as special access orders is 73 days over the last three months.

In its September 19, 2002 Ex Parte, Verizon stated that where it "has construction underway to meet anticipated future demand, Verizon's field engineers will provide a due date on CLEC orders for UNE DS1 and DS3 facilities (Loops/IOF) based on the estimated completion date of that pending job, even though no facilities are immediately available." Ex Parte at 3. While Verizon's "Facility Build" policy certainly pushes out the due date, it often does not result in facilities actually being available to fill CLEC orders as Allegiance's recent experiences in the District of Columbia demonstrate.

On May 21, 2002, Allegiance submitted a UNE DS1 order for a customer in the District of Columbia, requesting a due date of June 4. Verizon returned a firm order confirmation ("FOC") with a due date of August 9, 2002 stating that it had work underway to make additional facilities available. Verizon informed Allegiance on August 14, 2002, however, that there were no facilities available to fill the order. Verizon subsequently informed Allegiance that the order was rejected because the doubler equipment was old. Thus, Allegiance lost three months waiting for Verizon to complete construction that Allegiance was led to believe would provide the UNE DS1 it had ordered, only to be told at the end of that period that no facilities were available. In an effort to save the customer, Allegiance cancelled the UNE order and resubmitted an order for a special access DS1. Verizon returned a FOC with a due date of October 7, 2002 for the special access DS1. Assuming this due date is met, Allegiance's customer will have waited four and one-half months for the facility.

On May 22, 2002, Allegiance submitted another UNE DS1 order for a customer in the District of Columbia and was again informed by Verizon that the due date would be delayed because of the need to complete construction. On July 25, 2002, Verizon rejected the order due to no facilities because a doubler and cable were needed to complete the order. Again, after an unnecessary delay, Allegiance was forced to cancel the UNE order and resubmit an order for a special access DS1. Verizon returned a FOC with a due date of September 21, 2002, a delay of four months from the date the UNE order was initially submitted.

On July 1, 2002, Allegiance submitted a UNE DS1 order for another customer in the District of Columbia. Verizon returned a FOC on July 5, 2002 with a due date of September 13 due to no facilities and a pending construction job scheduled to be completed August 30, 2002. On September 6, Verizon rejected Allegiance's UNE order due to no facilities because a doubler would need to be installed. Again, Allegiance cancelled the UNE order and resubmitted an order for a special access DS1. On September 18, Verizon returned a FOC for the special access order with a due date of December 3, 2002. After Allegiance escalated the order, Verizon came back with a due date of October 25, 2002. It remains to be seen whether Verizon will honor the October 25th due date, but even if it does, Alleigance's customer will have had to wait four months for the provisioning of the DS1.

As the Virginia State Corporation Commission recently found, Verizon's no facilities policy "has a significant and adverse effect on competition in Virginia, is inconsistently applied across UNEs, is at odds with industry accounting rules, and is inconsistent with TELRIC-pricing principles. *In the Matter of Verizon Virginia, Inc. To Verify Compliance With The Conditions Set Forth in 47 U.S.C. §271(c),* Case No. PUC – 2002-00046, Report of Hearing Examiner Alexander F. Skirpan, Jr. at 116 (July 12, 2002). To the extent that CLECs like Allegiance use DS1 facilities to provide broadband services to their customers, Verizon's refusal to make such facilities available on a nondiscriminatory basis precludes CLECs from offering a cost effective alternative to the incumbent's broadband service.

<u>Verizon Has Admitted That Its No Facilities Policy Is Discriminatory</u>

Significantly, Verizon has admitted that it does not reject DS1orders it receives from its retail end users for any of the six reasons it cites to reject CLEC UNE DS1 orders. In the Maryland 271 proceeding, Verizon responded to a discovery request on its retail practices with the statement, "Generally speaking, Verizon MD does not reject DS1 requests for end users due to no facilities." See Attachment 4 hereto. This is true for both special access and non special access DS1 retail orders. See Attachment 5 hereto. In the Virginia 271 hearing, Verizon testified that it treats its retail customers more favorably than it treats its wholesale customers: "[B]ecause retail customers are not ordering UNEs, they're ordering either special access or they're ordering retail DS1s, and we build special access and we build for the retail side. We're not required to build UNEs." See Attachment 6. To the extent that Verizon undertakes minor upgrades to make DS1s available to its own retail end users, rather than reject their orders, Verizon's refusal to accord its CLEC wholesale customers comparable treatment is discriminatory and deprives CLECs of the ability to offer their own customers a competitive service.

State commissions reviewing similar conduct have concluded that it violates the non-discrimination standard of the Communications Act as well as state law. In *In the Matter of the Application and Complaint of WorldCom Technologies, Inc. against Ameritech Michigan, et al.*, Case No. U-12072 (March 3, 2000) the Michigan Public Service Commission ordered Ameritech to provision UNE transport under the same procedures and within the same time frames as special access. The decision cited as support an Opinion and Order of the federal District Court for the Eastern District of Michigan upholding a Commission decision directing Ameritech to make unbundled loops available to CLECs even if additional engineering or construction was necessary to make the facilities "available":

> The Court found that it "must determine whether Ameritech has an existing network to serve BRE's unbundled loop orders and whether those unbundled loops are available for BRE's use." . . . Ameritech Michigan had claimed that facilities did not exist or were not available on its network because certain

> equipment would have to be removed and other equipment added to condition loops for high speed data transfer. The Commission had found to the contrary, the loops did exist and were available and that Ameritech had discriminated in failing to provide the loops. The Court held that the Commission's order was consistent with both the interconnection agreement and the federal Telecommunications Act of 1996 (FTA). The Court noted that, under Ameritech Michigan's tariff, loops can be obtained "where facilities are available." . . . The Court cited Section 251(c) of the FTAS, 47 USC 251 (c), as requiring an incumbent carrier to provide access to unbundled loops in its "existing network.". . . In affirming the Commission's order that Ameritech Michigan must provide unbundled loops without additional charge, the Court affirmed the Commission's decision "that since Ameritech has an existing network of unbundled loops that can be used for unbundled loop access, it must provide BRE with access and make the unbundled loops 'available' even if additional engineering and construction are necessary." . . . The Court noted the Commission's finding that the additional construction and engineering needed to provision loops to BRE are normal, routine work covered by rates that are based on total service long run incremental cost (TSLRIC).

Id. at 8-9, citing *Ameritech Michigan v. MPSC and BRE Communications, LLC,* Case No. 99-CV-71180-DT (E. D. Mich, January 4, 2000). A copy of the Michigan Commission's decision is attached hereto as Attachment 7.

Similarly, to prevent discrimination between Ameritech's retail and wholesale customers, the Illinois Commerce Commission ordered Ameritech to modify its tariff to include the following definition of when facilities are available:

> a facility is available if it "is located in an area presently served by" Ameritech. This definition, applicable to CLECs, retail customers, and Ameritech's affiliates, will discourage inefficient network management and enable those requesting facilities to more accurately predict whether such facilities will be available.

In doing so, the Commission appropriately recognized that

> The definition of "available" is crucial to the determination of when Ameritech is obligated to provide a CLEC access to particular UNE facilities. If particular facilities are determined not to be "available," ILECs have no duty to provide CLECs access to such facilities. As a general proposition, it may be said that the narrower the definition, the fewer opportunities CLECs will have to compete. Accordingly, Ameritech has an incentive to narrowly define "available" so as to impair CLECs' ability to compete.

Illinois Commerce Commission On Its Own Motion vs. Illinois Bell Telephone Company, Docket 99-053, Order at 18, 21 (August 15, 2000). A copy of the Order is appended as Attachment 8.

Verizon Is The Only RBOC That Refuses To Make Thesen Minor Modifications

Through its operating subsidiaries, Allegiance provides local exchange service in 36 markets nationwide, including markets served by each of the other RBOCs. No other RBOC rejects UNE DS1 orders due to no facilities with the frequency or for the variety of reasons cited by Verizon. By its own admission, Verizon rejects 10% to 30% of all CLEC UNE DS1 orders due to no facilities. See Attachment 9 hereto. Allegiance has experienced rejection rates averaging more than 20% in the seven states in which it operates in Verizon North and Verizon South territory, but in at least one state has seen rejection rates as high as 60% in a single month. In contrast, the number of Allegiance UNE DS1 orders rejected due to no facilities by all other RBOCs combined is only 3%.

1. SBC/Ameritech

In an Accessible Letter dated October 27, 2000, SBC/Ameritech published its UNE Facility Modification and Construction Policy for all five Ameritech states. SBC/Ameritech's Facilities Modification Policy has as its objectives "to ensure no discrimination between retail and wholesale customers [and] significantly reduce the number of canceled UNE orders due [to] 'no facilities available.'" A copy of the SBC/Ameritech Accessible Letter is appended as Attachment 10. In contrast to Verizon, SBC/Ameritech will make the following modifications where necessary to provision a UNE DS1:

- place or rearrange cable
- place terminal or apparatus case
- add/remove repeaters
- expand existing electronics
- modify underground or buried facilities.

Id.

2. Pacific Bell

Pacific Bell does not reject UNE DS1 orders due to "no facilities." If facilities are not available to immediately provision an order, Pacific Bell will respond to the order with a jeopardy code while working to clear the problem. Once the UNE is ready for provisioning, Pacific Bell will contact the CLEC to establish a new due date.

3. Qwest

When Qwest lacks facilities to provision a CLEC UNE DS1 order, it treats the order in the same manner as it treats retail orders for an equivalent facility –i.e., Qwest does not discriminate in favor of its retail customers the way Verizon does. Qwest's Statements of Generally Available Terms ("SGAT") spell out that in a no facilities situation, Qwest will treat CLEC UNE orders "on the same terms and conditions as orders for equivalent retail services." Section 9.1.2.1 of Qwest's Washington SGAT provides as follows:

> 9.1.2.1 If facilities are not available at a location where UNEs are desired by CLEC and where Qwest has deployed facilities and the unavailability is because all existing suitable Qwest facilities at that location are already in use serving Customers . . . (2) CLEC orders for UNEs above DS0 level or for Local Exchange Service quantities above POLR [Provider Of Last Resort] will be subject to the same terms and conditions as orders for equivalent retail services at the same location. . . .
>
> 9.1.2.1.1. Upon receipt of an LSR or ASR, Qwest will follow the same process that it would follow for an equivalent retail service to determine if assignable facilities exist that fit the criteria necessary for the service requested. If available facilities are not readily identified through the normal assignment process, but facilities can be made ready by the requested Due Date, CLEC will not receive an additional FOC, and the order Due Date will not be changed.

(Emphasis added.) See Attachment 11 hereto. Similar language appears in Qwest's Colorado, Oregon and Minnesota SGATs, copies of which are appended as Attachments 12, 13 and 14.

Conclusion

Allegiance submits that at a minimum, the Commission should clarify its UNE provisioning rules with the adoption of the following language:

> No ILEC may decline a request for an unbundled network element or subelement on the grounds that facilities are not available where the ILEC could provision the element by performing routine modifications, such as adding an apparatus or doubler case or placing and/or turning up a repeater shelf or multiplexer, and where the ILEC performs such work for its retail customers.

The inordinately high percentage of CLEC UNE DS1 orders that Verizon rejects due to no facilities coupled with the fact that it does not reject retail DS1 orders due to no facilities and will routinely make the facility modifications necessary to provision a DS1 for a retail customer that it refuses to make to provision a UNE DS1 for a CLEC demonstrate that Verizon is not complying with the requirement of Section 251(c)(3) to provide nondiscriminatory access to unbundled network elements on terms and conditions that are just and reasonable. Allegiance respectfully requests that the Commission clarify its rules addressing the obligations of the ILECs to provide nondiscriminatory access to unbundled network elements to put an end to Verizon's anticompetitive practices.

If you have any questions, kindly contact the undersigned.

Respectfully submitted,

Mary C. Albert

Mary C. Albert
Vice President Regulatory and Interconnection

cc William Maher
Thomas Navin
Robert Tanner
Jeremy Miller

ATTACHMENT 1

July 24, 2001

«MR_MS» «FIRST» «LAST_NAME»
«TITLE»
«IC_COMPANY»
«ADDRESS»
«CITY», «STATE» «ZIP»

Dear «MR_MS» «LAST_NAME»:

A number of carriers have recently expressed concern that Verizon is changing its policies with respect to the construction of new DS1 and DS3 Unbundled Network Elements. This is not the case. To ensure that there is no misunderstanding on this point this letter restates Verizon's policies and practices with respect to the provisioning of unbundled DS1 and DS3 network elements.

In compliance with its obligations under applicable law, Verizon will provide unbundled DS1 and DS3 facilities (loops or IOF) to requesting CLECs where existing facilities are currently available. Conversely, Verizon is not obligated to construct new Unbundled Network Elements where such network facilities have not already been deployed for Verizon's use in providing service to its wholesale and retail customers. This policy, which is entirely consistent with Verizon's obligations under applicable law, is clearly stated in Verizon's relevant state tariffs and the CLEC Handbook, and is reflected in the language of Verizon's various interconnection agreements.

This does not mean that CLECs have no other options for obtaining requested facilities from Verizon.

In areas where Verizon has construction underway to meet anticipated future demand, Verizon's field engineers will provide a due date on CLEC orders for unbundled DS1 and DS3 network elements based on the estimated completion date of that pending job, even though no facilities are immediately available. Rigid adherence to existing policies could dictate that the field engineers reject these orders due to the lack of available facilities; but in an effort to provide a superior level of service, Verizon has chosen not to do so. In such cases, the result is that the order is filled, but the provisioning interval is longer than normal. At the same time, Verizon's wholesale customers should not confuse these discretionary efforts to provide a superior level of service with a perceived *obligation* to construct new facilities.

Moreover, although Verizon has no legal obligation to add DS1/DS3 electronics to available wire or fiber facilities to fill a CLEC order for an unbundled DS1/DS3 network element, Verizon's practice is to fill CLEC orders for unbundled DS1/DS3 network elements as long as the central office common equipment and equipment at end user's location necessary to create a DS1/DS3 facility can be accessed. However, Verizon will reject an order for an unbundled DS1/DS3 network element where (i) it does not have the common equipment in the central office, at the end user's location, or outside plant facility needed to provide a DS1/DS3 network element, or (ii) there is no available wire or fiber facility between the central office and the end user.

Specifically, when Verizon receives an order for an unbundled DS1/DS3 network element, Verizon's Engineering or facility assignment personnel will check to see if existing common equipment in the central office and at the end user's location has spare ports or slots. If there is capacity on this common equipment, operations personnel will perform the cross connection work between the common equipment and the wire or fiber facility running to the end user and install the appropriate DS1/DS3 cards in the existing multiplexers. They will also correct conditions on an existing copper facility that could impact transmission characteristics. Although they will place a doubler into an existing apparatus case, they will not attach new apparatus cases to copper plant in order to condition the line for DS1 service. At the end user's end of the wire or fiber facility, Verizon will terminate the DS1/DS3 loop in the appropriate Network Interface Device (Smart Jack or Digital Cross Connect (DSX) Panel).

In addition, if Verizon responds to a CLEC request for an unbundled DS1/DS3 network element with a Firm Order Completion date (FOC), indicating that Verizon has spare facilities to complete the service request, and if Verizon subsequently finds that the proposed spare facilities are defective, Verizon will perform the work necessary to clear the defect. In the event that the defect cannot be corrected, resulting in no spare facilities, or if Verizon has indicated that there are spare facilities and Verizon subsequently finds that there are no spare facilities, Verizon will not build new facilities to complete the service request.

Finally, wholesale customers of Verizon, like its retail customers, may request Verizon to provide DS1 and DS3 services pursuant to the applicable state or federal tariffs. While these tariffs also state that Verizon is not obligated to provide service where facilities are not available, Verizon generally will undertake to construct the facilities required to provide service at tariffed rates (including any applicable special construction rates) if the required work is consistent with Verizon's current design practices and construction program. Even in these cases, of course, Verizon must retain the right to manage its construction program on a dynamic basis as necessary to meet both its service obligations and its obligation to manage the business in a fiscally prudent manner.

In summary, although Verizon's policies regarding the construction of new DS1 and DS3 Unbundled Network Elements remain unchanged, Verizon continues to strive to meet the requirements of its wholesale customers for unbundled DS1 and DS3 facilities in a manner that is consistent with the sound management of its business.

If you have any questions regarding Verizon's unbundled DS1/DS3 building practice, you may contact your Account Manager.

Sincerely,

ATTACHMENT 2

CUF MEETING MINUTES

'Notes from meetings previous to July 24, 2001, and relevant to a topic, have been archived separately.

#57: NO FACILITIES NOTIFICATION:

DESCRIPTION: Allegiance requests Verizon to review the "no facilities" notification process used by Ameritech and consider its implementation in Verizon territory. If not, the CLEC-community asks that more information regarding the "no facilities" condition be provided in the "Remarks" field of the order so that the CLEC can decide to keep the order active or not.

EXAMPLE:

OPENED: MAY 2001 by L.Ercan (Alliegiance)

CLEC SPONSORS: ABS, Allegiance, Cox, Teligent, & XO.

VERIZON FACILITATOR: John White / D.Beavers (703-645-1256)

PRODUCT(S) AFFECTED BY ISSUE:

☐ Collocation ☐ Line-Sharing ☐ Special Access (FCC Tariff)
☐ DSL ☐ Line-Splitting ☒ UNE-Loop
☐ Interconnection/IXC ☐ LNP ☐ UNE-Platform
☐ Interconnection/Switched Access ☐ Resale ☒ UNE Specials/IOF (Local Tariffs)
☐ **OTHER (Please Specify):** ____________________

STATE(S) WHERE ISSUE OCCURS:

☒ Entire Footprint ☐ Connecticut ☐ Maryland ☐ New Jersey ☐ Vermont
☐ "North Region" ☐ Delaware ☐ Massachusetts ☐ New York ☐ Virginia
☐ "South Region" ☐ Maine ☐ New Hampshire ☐ Pennsylvania ☐ Washington, DC
☐ Rhode Island ☐ West Virginia

☐ ***CLOSED as of***: ________ ☐ ***RESOLVED*** ☐ ***AGREE TO DISAGREE***
☐ ***UNRESOLVED*** ☐ ***MOVED TO OTHER FORUM:***__________

FOLLOW-UP ACTION ITEM(S) & ASSIGNED OWNER(S) & DATE(S) DUE:

1. Include presentation with CUF minutes. (Poydras)
2. T. Young to follow-up on special access extended due dates and standard reason codes for Digital & UNE Pots.

GENERAL MEETING MINUTES –

1/23/02 – Per John Zankowski effective January 15th a new process with six standardized reasons for no facilities will be in place for UNE HiCap services only.

1. No repeater shelf in CO or Customer Location/Remote Terminal
2. No apparatus or doubler Case
3. Need to place fiber or mux
4. Need to turn up shelf or mux
5. No riser cable or buried drop wire if trench or conduit not provided
6. Copper cable defective no spares available-would need to place new cable (fiber/copper)

These will be rolled out for the entire East area. A request was made to provide similar detail on special access orders delayed for facility reasons. A Change Control call addressing Jeopardies was held on 1-24 and addressed "no facilty" responses for Digital and POTS UNE loops.

11/27/01 – VZ to provide update at Jan 2002 meeting.

July 24, 2001 – D. Beavers (VZ):
Orlando Montan indicated that he would review to see if any additional detail can be provided on "no facilities" situations.

CLEC RESPONSE –

ATTACHMENT 3

VERIZON MARYLAND INC.

CASE NO. 8921

RESPONSE TO

ALLEGIANCE TELECOM OF MARYLAND, INC. DATA REQUEST NO. 2
DATED AUGUST 23, 2002

7 The recent FCC Virginia Arbitration Order released July 17, 2002, in CC Docket No. 00-218, *et al.*, footnote 1658, states that "Verizon cannot refuse to provision a particular loop by claiming that multiplexing equipment is absent from the facility. In that case, Verizon must provide the multiplexing equipment, because the requesting carrier is entitled to a fully-functioning loop." Will Verizon apply this ruling in Maryland so that going forward CLEC UNE DS1 orders will not receive "no facilities" rejections for the following reasons stated in Verizon's August 19, 2002 Reply Checklist Affidavit: Verizon will not (1) "deploy new multiplexers in the central office or at the customer's premises where existing equipment is fully utilized"; or (2) "reconfigure a multiplexer (that is, rewire and reprogram a shelf on the on the multiplexer from DS-3 to DS-1)"? If Verizon will not follow the FCC Virginia Arbitration Order in Maryland and discontinue "no facilities" rejections in these two instances involving multiplexing, please explain why not.

RESPONSE:

Verizon MD stated its position and the applicable rulings regarding it "no facilities" policy in its Reply Declaration at paragraphs 78-93. Verizon MD's "no facilities" policy is the same policy used by Verizon PA and Verizon NJ, both of which received 271 approval from the FCC. (*See* Checklist Reply Declaration ¶¶ 84-85). Nothing in FCC Virginia Arbitration Order overrules these prior FCC 271 rulings. Indeed, as noted in the Reply Declaration, Verizon's "no facilities" policy is based on the legal determination that ILECs are not obligated under law to build new facilities for UNEs, (*Id.* ¶ 92), and the FCC in the Virginia Arbitration Order reconfirmed this fact where it explicitly stated that "Verizon is also correct that the Act does not require it to construct network elements ... for the sale purpose of unbundling those elements for ... other Carriers'." (*Id.* (citation omitted).) Finally, the issue regarding the provisioning of high capacity loops as UNES is currently pending before the FCC in its Triennial Review proceeding and is not an issue to be addressed for Section 271 compliance. (*See* Checklist Reply Declaration ¶¶ 86 and 93.)

ATTACHMENT 4

VERIZON MARYLAND INC.

CASE NO. 8921

RESPONSE TO

ALLEGIANCE TELECOM OF MARYLAND, INC. DATA REQUEST NO. 1
DATED JUNE 19, 2002

3 What percentage of end user service orders does Verizon reject due to "no facilities"? Please describe the circumstances under which Verizon rejects end user service orders due to no facilities.

RESPONSE:

Generally speaking, Verizon MD does not reject DS1 requests for end users due to no facilities.

ATTACHMENT 5

VERIZON MARYLAND INC.

CASE NO. 8921

RESPONSE TO

ALLEGIANCE TELECOM OF MARYLAND, INC. DATA REQUEST NO. 2
DATED AUGUST 23, 2002

[illegible]. Does Verizon reject orders from its retail customers for non-special access DS1 products for any of the reasons listed in Paragraph 82 of its Reply Checklist Affidavit? If so, which reasons are used to reject retail non-special access DS1 orders.

RESPONSE:

Please see response to Allegiance Set 1 question 3.